

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
COURT FILE NO.: 03-CV- 0510 C**

Penny Lee Anderson and
Russell D. Anderson, Sr.,

Plaintiffs,

-vs-

**AFFIDAVIT OF THOMAS J. LYONS, JR.
IN OPPOSITION TO DEFENDANT TRANS
UNION'S SUPPLEMENTAL MOTION
FOR SUMMARY JUDGMENT**

Trans Union, L.L.C.;
Experian Information Solutions Inc.;
CSC Credit Services, Inc.;
Equifax, Inc. d/b/a Equifax Information Services
LLC,

Defendants.

Thomas J. Lyons, Jr., Esq., being duly sworn and upon oath, deposes and says as follows:

1. That I am one of the attorneys representing Plaintiffs in the above-entitled matter. I submit this Affidavit in opposition to Defendant Trans Union's Supplemental Motion for Summary Judgment.
2. That Plaintiffs have duly noticed the deposition of William Stockdale in this case.
3. That Defendant Trans Union has refused to ever produce William Stockdale for a deposition in this case.
4. That attached hereto as Exhibit A is a true and correct copy of a January 19, 2005 email from Trans Union's counsel G. John Cento to me, in which Trans Union indicates that it refuses to ever produce William Stockdale for a deposition in this case.
5. Defendant Trans Union's counsel G. John Cento is under the mistaken impression that an agreement was reached whereby William Stockdale would be put up for deposition on a

single day in the McKeown v. Trans Union (03-C-0528C) case and that it would also serve as the only opportunity to depose him in the present case.

6. Specifically, Plaintiff did not make such an agreement with Defendant Trans Union and the record from the McKeown deposition of Stockdale is void of any such stipulation or agreement.
7. Further, in the McKeown deposition of Stockdale not one question or one exhibit related to the Plaintiffs Anderson was introduced.
8. Defendant Trans Union has unsuccessfully taken this position in the United States District Court in the District of Minnesota in the case of Schmitt v. Trans Union (03-cv-3295 ADM/AJB) See Order granting Plaintiff's Motion to Compel (Exhibit B attached hereto) and Transcript from the January 10, 2005 Motion hearing (Exhibit C attached hereto).
9. That in order to thoroughly oppose Trans Union's present motion, Plaintiffs additionally need to take the depositions of Rule 30(b)(6) representatives of First Data Resources (FDR) and the Credit Data Industry Association (CDIA) and an additional Rule 30(b)(6) representative of Cross Country Bank (CCB) (to answer questions its initial Rule 30(b)(6) representative Edward McKenna could not); and obtain documents, including the carbon copies to Trans Union of CCB's ACDV responses to other CRAs, and the June 2003 name scans (monthly archived snapshots of Plaintiffs' credit history) for Penny and Russell Anderson that were not produced by Defendant in response to Plaintiffs' First Request for Production of Documents and were omitted from Romanowski depo. Ex. 1.
10. That through such anticipated discovery and depositions Plaintiffs expect to, inter alia:
 - Cross-examine Stockdale on his assertions in his affidavit including, but not limited to, whether CCB was a reliable source of information;
 - Discover more specifics of the role FDR played in furnishing information to Trans Union, to show that it might be insufficient that CCB was reliable if FDR was not;

- Discover the nature of any contract between Trans Union and its true furnisher, FDR;
 - Obtain specific documentation that Trans Union received carbon copies of CCB's ACDV responses to other credit reporting agencies, to show that Trans Union had notice of CCB's desire to alert Trans Union and the other credit reporting agencies to the fact that the Plaintiffs should not be reported as deceased;
 - Obtain confirmation from CDIA, the entity that Plaintiffs understand is responsible for the E-OSCAR system, that ACDV responses are automatically carbon copied to all CRAs, also to show that Trans Union had notice of CCB's desire to alert Trans Union and the other credit reporting agencies to the fact that the Plaintiffs should not be reported as deceased.
11. That Plaintiffs have been prevented from obtaining such discovery and depositions because of the January 6, 2005 discovery stay ordered by this Court.
12. That accordingly, pursuant to Fed. R. Civ. P. 56(f), Plaintiffs are presently unable to present by affidavit certain additional facts pertinent to Plaintiffs' opposition to Defendant's Motion.
13. That, without waiving any right to obtain additional discovery, Plaintiffs nevertheless believe that the evidence presently in the record is more than sufficient to defeat Defendant's Supplemental Motion for Summary Judgment; that, if however, the present record would somehow not be sufficient for Plaintiff to survive Defendant's Supplemental Motion for Summary Judgment, then Plaintiff seeks denial of Defendants' motion pursuant to Fed. R. Civ. P. 56(f) and an opportunity to engage in the additional discovery outlined herein.

FURTHER YOUR AFFIANT SAYETH NOT.

s/Thomas J. Lyons, Jr.
Thomas J. Lyons, Jr.

Subscribed and sworn before me
this 7th day of February, 2005.

s/John H. Goolsby
Notary Public

Sue Wolsfeld

From: G John Cento [GJCento@katzkorin.com]
Sent: Wednesday, January 19, 2005 3:28 PM
To: swolsfeld@lyonslawfirm.com; Christopher Lane; Tommycj@aol.com
Cc: Lewis Perling; Girvan, Erik J.
Subject: RE: Anderson: NOD Stockdale

Dear Tom:

As I have previously explained, our position is and remains that you have already deposed Mr. Stockdale. Therefore, we object to this Notice and for that reason will not be producing Mr. Stockdale for deposition on February 28th. To the extent any further justification is needed, it also happens that I would not be available for a deposition on February 28th in any event. I will have just returned from overseas on the 27th and, therefore, would not be able to either get to the deposition or prepare the witness.

I again invite you to call me to discuss this matter before making any further attempts to notice Mr. Stockdale's deposition.

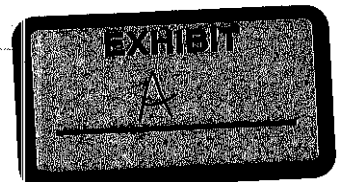
Thank you for your cooperation.

G. John Cento, Esq.
KATZ & KORIN, P.C.
The Emelie Building
334 North Senate Avenue
Indianapolis, Indiana 46204
Office: (317) 464-1100
Direct: (317) 615-4235
Fax: (317) 464-1111
E-Mail: gjcento@katzkorin.com

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1/25/2005



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

CIVIL MOTION HEARING

Peggy Marie Schmitt,

Plaintiff(s),

v.

Chase Manhattan, et al.,

Defendant(s).

COURT MINUTES

BEFORE: Arthur J. Boylan

U.S. Magistrate Judge

Case No: 03cv3295 ADM/AJB

Date: January 10, 2005

Court Reporter:

Tape Number: #1

Time Commenced: 9:00 a.m.

Time Concluded: 9:15 a.m.

Time in Court: 15 Minutes

APPEARANCES:

For Plaintiff: Tom Lyons, Jr.

For Defendant Trans Union, LLC: G. John Cento

Interpreter / Language: NA / NA

IF MOTION IS RULED ON PLEASE INCLUDE DOCUMENT NUMBER AND TITLE APPEARING IN CM/ECF.
ORDER TO BE SUBMITTED BY: ☐ COURT ☒ PLAINTIFF ☐ DEFENDANT

Motion to take Rule 30(b)(6) deposition granted on the record [Docket No. 68]

Deposition shall be limited to 2 hours and shall either be conducted in Chicago or by telephone.

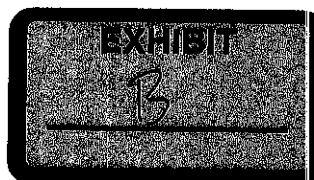
Plaintiff counsel to prepare written order.

Motions taken under advisement as of: NA

☒ ORDER TO BE ISSUED ☐ NO ORDER TO BE ISSUED ☐ R&R TO BE ISSUED ☒ NO R&R TO BE ISSUED

☐ Exhibits retained by the Court ☐ Exhibits returned to counsel

s/Paul S.
Signature of law clerk



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
COURT FILE NO.: 03-3295 ADM/AJB

Peggy Marie Schmitt,

Plaintiff,

-vs-

Trans Union, L.L.C. et al.,

Defendants.

ORDER

The above-referenced matter came before The Honorable Magistrate Judge Arthur J. Boylan for the Plaintiff's Motion to Compel Defendant Trans Union to produce a Rule 30(b)(6) Representative(s) to respond to questions related to the remaining topic areas.

Thomas J. Lyons, Jr., Esq. appeared on behalf of the Plaintiff and G. John Cento, Esq. appeared on behalf of Defendant Trans Union.

The Court having heard the arguments of counsel, being fully advised in the premises and upon all the files, records and proceedings herein, IT IS HEREBY ORDERED, that Plaintiff's Motion to Compel is **GRANTED** and Defendant Trans Union shall produce William Stockdale for a two-hour deposition at a time and place mutually agreed to by the parties.

DATED: January 10, 2005

s/ Arthur J. Boylan
Hon. Magistrate Judge Arthur J. Boylan
United States District Court

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

3 -----
4 Peggy Marie Schmitt,
5 Plaintiff,

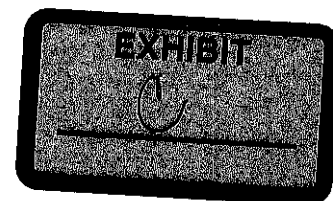
6 vs.

7 Trans Union, L.L.C, et.al.,
8 Defendants.
9 -----

COPY
Case No. 03-3295

10
11
12 THE HONORABLE ARTHUR J. BOYLAN
13 United States Magistrate Judge
14
15

16 * * * *
17 TRANSCRIPT OF PROCEEDINGS
18 * * * *



23 Date: January 10, 2005

24 Reporter: Leslie R. Pingley
25

A P P E A R A N C E S

MR. THOMAS J. LYONS, JR., Attorney at Law, 342 County Road D, Little Canada, Minnesota 55117, appeared on behalf of Plaintiff.

MR. G. JOHN CENTO, Attorney at Law, 334 North Senate Avenue, Indianapolis, Indiana 46204, appeared on behalf of Defendants.

P R O C E E D I N G S

THE COURT: -- first is Chase
Manhattan Bank and others. Court file
is 03-3295. How about in the courtroom?

FEMALE SPEAKER: Patricia
(Inaudible) representing CSC.

THE COURT: Do you want to come
up and have a seat at counsel table?

And representing plaintiff?

MR. LYONS: Good morning, Your
Honor, Tom Lyons, Jr.

THE COURT: You have a motion to
compel?

MR. LYONS: Yes, I do. I
wasn't -- I didn't know that it was
telephonic, so I apologize if I made
some mistake.

THE COURT: I'm not sure who
scheduled it as such, but I usually
don't have a problem with out of town
counsel appearing by telephone.

MR. LYONS: Okay. I will be
brief, Your Honor. This is a case --
Peggy Schmitt was reported as deceased

1 by several of the credit reporting
2 agencies related to two specific trade
3 lines, Bank One and Chase.

4 THE COURT: So how long do you
5 think you need this 30(b)(6) depo for?
6 How long would it take? You have one
7 topic you have to cover with this
8 gentleman?

9 MR. LYONS: It's two topics.

10 THE COURT: Two topics?

11 MR. LYONS: And a series of
12 documents. If I could just explain.
13 TU has produced several hundred pages.
14 When they initially produced these
15 pages they were Bates numbered
16 incorrectly and we have had the same
17 problem with another -- with Ms.
18 Romanowski whose deposition I already
19 took in June now I am going to have to
20 take her deposition again. There's
21 been no objection by TU. As a matter
22 of fact, they have agreed to do that,
23 to produce her again, because we have
24 got misnumbered documents, so I am
25 going to take her's again. I would like

1 to take Mr. Stockdale's specific to
2 Peggy Schmitt's case and specific to
3 these documents.

4 THE COURT: And you took his
5 deposition in a previous case?

6 MR. LYONS: In another case.

7 THE COURT: And that's what the
8 argument is about that that deposition
9 in this previous case should be used in
10 this case?

11 MR. LYONS: Right. That was a
12 40-minute deposition dealing with
13 another plaintiff by the name of Jim
14 McKewen in with another account having
15 to do with Sears and another case where
16 they were reporting somebody as
17 deceased.

18 So to answer to your original
19 question, Your Honor, I would say no
20 more than two, two and a half hours for
21 Mr. Stockdale to answer questions about
22 this case, about Peggy Marie Schmitt
23 and the documents they have produced
24 and that basically is it, Your Honor.

25 THE COURT: How about Mr. Cento,

1 tell me about your view of this.

2 MR. CENTO: Okay, Your Honor,
3 this deposition he noted -- he sent us
4 4 30(b)(6) notices way back when in the
5 summer of last year. All four of these
6 cases that we're talking about and I --
7 we designated three different witnesses
8 to discuss the various topics. One of
9 the witnesses was Bill Stockdale and we
10 agreed at that time that Bill Stockdale
11 who was being produced to really just
12 talk about the systems and how it works
13 in general with respect to any consumer
14 would only be deposed one time in the
15 McKewen matter.

16 THE COURT: But isn't that what
17 the real issue is is whether or not
18 there was an agreement that it would be
19 a deposition one time or not.

20 MR. CENTO: That's correct,
21 Your Honor, there is an issue to that
22 because the plaintiff is saying he no
23 longer remembers our deal. Luckily,
24 and although we have never reduced it
25 to writing, I specifically referenced

1 that deposition and the fact that he
2 had taken that deposition for purposes
3 of this case during the -- during a
4 previous deposition in this case and
5 the deposition of Lynn Romanowski. I
6 specifically told -- I'm sorry, Eileen
7 Little. As we -- part of the
8 deposition he asked what areas Eileen
9 Little was going to be deposed about,
10 I said A, B and C and specifically told
11 him she would not testify about the
12 areas that were covered by
13 Mr. Stockdale who had already been
14 deposed in McKewen and the plaintiff's
15 counsel make no objection whatsoever at
16 that time and hasn't since.

17 What's happened --

18 THE COURT: But isn't that --
19 you put that in your written response
20 to the motion, but as you say you don't
21 have any written agreement to that and
22 when I'm reading it it's less than
23 clear frankly that there's been an
24 agreement. I mean that's what you say
25 but I don't hear -- I don't see any

1 part of the transcript where Mr. Lyons
2 responded affirmatively that that's the
3 agreement that they have reached or
4 that you negotiated.

5 MR. CENTO: He did not respond
6 affirmatively but nor did he object to
7 what I said.

8 THE COURT: Is this a big deal,
9 that he wants to take a 30(b)(6) of
10 Mr. Stockdale for a couple hours?

11 MR. CENTO: It is.

12 THE COURT: Why?

13 MR. CENTRO: He has already
14 taken the deposition. What's happened,
15 Your Honor, is that he realizes now
16 there's questions he should have asked
17 and didn't ask on the topics that he's
18 already questioned about and now he
19 wants to take it again.

20 It's the equivalent of taking
21 someone's deposition and then realizing
22 after you have taken it that you didn't
23 do a great job and so now you want to
24 take another deposition. That's
25 exactly what he's doing because the day

1 that he served me with the notice of
2 deposition that we're arguing about is
3 the day that he took Lynn Romanowski's
4 deposition and throughout that
5 deposition he attempted to ask her
6 questions that should have been asked
7 of Bill Stockdale. I objected, told
8 him he should have asked Bill Stockdale
9 those questions.

10 THE COURT: Where is that at?

11 MR. CENTO: I'm sorry?

12 THE COURT: Where's that --
13 where's that colloquy at?

14 MR. CENTO: That is in a
15 deposition in the Anderson case, one of
16 these four cases that we're talking
17 about when he deposed one of these
18 three witnesses that we're talking
19 about. Her name is Lynn Romanowski and
20 throughout that deposition he had that
21 problem and not only that, the McKewen
22 matter went to trial and he realized at
23 that point as well that he had not
24 taken a good deposition of Bill
25 Stockdale and so that's all that's

1 going on here. He just didn't take a
2 good deposition and now he wants
3 another bite at the apple.

4 THE COURT: Well, I don't think
5 from my view that there's a rock solid
6 agreement that you can point to. I'm
7 going to allow the deposition to go
8 forward. It's going to be limited to
9 two hours.

10 Anything further from the plaintiff?

11 MR. LYONS: No, Your Honor.

12 THE COURT: Anything further
13 from the defense?

14 MR. CENTO: Your Honor, the
15 plaintiff has asked that in his motion
16 that the witness be brought to
17 Minnesota. We object to that. This
18 witness is in Chicago.

19 THE COURT: Are you going to do
20 it by telephone?

21 MR. LYONS: I will go to
22 Chicago. (Inaudible).

23 THE COURT: All right. Do it in
24 Chicago or do it by telephone. Okay.
25 Two hours and I am going to grant the

1 motion. Mr. Lyons, you prepare the
2 proposed written order.

3 MR. LYONS: I will, Your Honor.

4 THE COURT: Oh, thank you. Bye
5 now.

6 * * *

1 STATE OF MINNESOTA)
2) ss.
3 COUNTY OF HENNEPIN)
4

5 BE IT KNOWN, that I transcribed the
6 electronic proceedings held before The
7 Honorable Arthur J. Boylan on the 10th of
8 January 2005;
9

10 That the proceedings were recorded
11 electronically and stenographically
12 transcribed into typewriting, that the
13 transcript is a true record of the
14 proceedings, to the best of my ability;
15

16 That I am not related to any of the
17 parties hereto nor interested in the outcome
18 of the action;
19
20

21 WITNESS MY HAND THIS 25TH DAY OF
22 JANUARY 2005.
23
24

25 _____
Leslie R. Pingley